

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 6639 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT and

MR.JUSTICE C.K.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

GHUSA KARSHAN & ARJAN KARSHAN

Appearance:

MR SJ DAVE AGP for Appellant

CORAM : MR.JUSTICE Y.B.BHATT and

MR.JUSTICE C.K.BUCH

Date of decision: 25/03/98

ORAL JUDGEMENT

Per : Y.B. Bhatt, J.

1. Heard the learned counsel for the respective parties. Mr. G.H. Bhatt states that he will be filing his Vakalatnama for the respondent in due course.

2. Appeal admitted. On joint request of learned counsel for the respective parties, this appeal is taken up for final hearing today. So far as the valuation of the market value of the lands is concerned, we have already confirmed the value determined by the Reference Court by dismissing the cognate appeals filed by the State of Gujarat by separate judgment and order passed today. Thus, so far as this appeal is concerned, determination of the market value of the land is concluded.

3. The only other point raised by learned counsel for the appellant is as regards the valuation of the well situated on the acquired land so far as this appeal is concerned.

3.1 Admittedly, the acquired land is irrigated land, and the irrigation is on account of the well in question. It is therefore contended that where the land is valued as irrigated land, and the source of irrigation is the well situated on the land itself, the well cannot be individually valued and separate and distinct compensation for the same cannot be awarded over and above the compensation of the land itself. This aspect is covered in favour of this submission by a decision of the Supreme Court in the case of State of Bihar reported at 1996 (10) SCC P. 635, following an earlier decision of the Supreme Court in the case of O. Janardan Reddy reported at 1994 (6) SCC P. 456.

3.2 Learned counsel for the respondent does not question the principles laid down in the said decision, nor the application of the principle to the facts of the case. In all fairness, he has conceded that the compensation for the well at Rs. 5,000/- in the instant case, if deducted from the compensation otherwise payable, would be justified. Accordingly, the impugned judgment and award in the instant case is modified only to the extent that the respondent -original claimant would not be entitled to Rs. 5,000/- for the well in question. Rest of the award stands confirmed.

4. In conclusion therefore, the appeal filed by the State of Gujarat succeeds in part. The same is accordingly partly allowed with no order as to costs.

5. Decree accordingly.

Amp/-

